

If you are served with legal papers

- Write down the *DATE* you received the legal papers, and who gave them to you.
- *IMMEDIATELY* contact your agency supervisor and the Office of Attorney General.
- Give **written notice** of the lawsuit to the head of your agency **and** the Office of Attorney General **within 10 days** of being served with legal papers. You must do this in order to qualify for many of the benefits described in this brochure.
- If you want the state to pay for your lawyer, you also must make a **written request for defense** and give it to your agency head **and** the Office of Attorney General **within 10 days of being served**. It's best if you do this immediately.
- Give your attorney the legal papers you were served and the relevant background information.
- To qualify for representation by a state attorney, and most other benefits listed in this brochure, you must provide full cooperation and complete disclosure throughout the defense of the case.

These protections apply to temporary and permanent employees, present and former officers or employees of the State and all persons acting in an official capacity on behalf of a state agency, board, commission or department.

CONTACT INFORMATION

Office of Attorney General
600 E. Boulevard Avenue
Department 125
Bismarck, ND 58505-0040

Tel: (701) 328-2210
Fax: (701) 328-2226
TTY: (800) 366-6888
www.ag.state.nd.us

You may also obtain more information on this subject as well as information on reducing the risk of lawsuits from:

The Risk Management Division
Office of Management & Budget
1600 E. Century Ave, Suite 4
Bismarck, ND 58503

Tel: (701) 328-7584
Fax: (701) 328-7585
www.state.nd.us/risk



Liability of State Employees in North Dakota



Office of Attorney General

Wayne Stenehjem
Attorney General

Can I really be sued for doing my job?

Although you enjoy certain protections as a state employee, you can still be sued for job-related actions or decisions. The real question is whether the lawsuit against you will be successful.

The North Dakota Legislature has enacted several laws to protect state employees from job-related lawsuits. However, in order for you to be protected by these laws, you must follow all established procedures. These procedures, and your responsibilities, are explained briefly in this brochure.

North Dakota law provides that a lawsuit based on the actions of a state employee “within the scope of the employee’s employment” must be brought **against the State and not the state employee**. A state employee’s actions are “within the scope of employment” if:

- (1) The action was a lawful part of the employee’s job; **and**
- (2) The action was not reckless, illegal conduct or intentional misconduct.

However, if the person bringing a suit ignores state law and sues a state employee, as an individual, for job-related actions, the employee has “statutory immunity” under state law.



Under this statutory immunity, a state employee may not be held “personally liable” ~ that is, be ordered by a court to pay money damages out of his or her own pocket ~ for job-related actions **unless** the employee was extremely careless, **or** engaged in intentional misconduct or positively unlawful conduct.

The person suing has the burden of convincing the court that the employee was not acting “within the scope of employment.”

The law provides additional immunities to protect state employees. For example, a state employee may not be held liable for:

- ◆ Discretionary actions;
- ◆ Legislative or rule-making activities;
- ◆ Judicial or quasi-judicial actions, like deciding a contested case or appeal; or
- ◆ Exercising reasonable care in implementing a statute or rule, even if that statute or rule later is found to be invalid.

If one of these immunities applies, the state employee should be dismissed from the lawsuit.

A federal court or a court in another state may not apply all of the protections given by North Dakota law and our state laws do not necessarily apply in those courts.

To deal with this possibility, state law provides that, except for punitive damages, the State will “indemnify” (or stand behind by insuring) a state employee who is found personally liable for actions “within the scope of employment,” **if** that employee gave timely notice of the claim **and** cooperated in the defense of the case.

Courts or juries sometimes award “punitive damages” to people who sue successfully. The

purpose of these particular awards is to punish the person who committed the wrongdoing. Punitive damages are awarded rarely and usually only for extreme misconduct. The State will not pay a “punitive damage” award for a state employee.

The law requires anyone who sues a state employee for job-related actions to send a copy of the legal papers starting the lawsuit to the State’s Office of Management and Budget (OMB). When OMB receives these papers, someone from the Risk Management Division of OMB or the Office of Attorney General will contact the employee. If a state employee is served with legal papers, however, the employee should not wait to be contacted by OMB.

If you are sued, you should notify your supervisor and the Office of Attorney General immediately, in writing.

Depending on the case, the State may provide an attorney hired by the Risk Management Fund or an attorney from the Office of Attorney General to represent you. You may choose to hire your own attorney, but the State will not pay your attorney’s fees, nor will it pay a judgment against you if you lose.

If you are concerned that job-related actions or decisions are putting you or the State at risk of being sued, you should discuss the situation with your supervisor. The supervisor may wish to contact the agency’s attorney or the Risk Management Division to discuss the issue further and take appropriate actions to minimize the risks of a lawsuit.